

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Suzanne Moe
PO Box 1166
Eastsound, WA 98245

Agent: Islands Surveying
PO Box 775
Eastsound, WA 98245

File No.: PLP000-13-0002

S.J.C. COMMUNITY

Request: Preliminary Plat Approval

DEC 02 2013

Parcel No: 271424008

DEVELOPMENT & PLANNING

Location: Orcas Island

Summary of Proposal: Seven lot subdivision with additional open space tract.

Land Use Designation: Eastsound Residential 1/acre P*

Public Hearing: November 13, 2013

Application Policies and Regulations: SJCC 18.70.050(F)

Decision: Application approved subject to conditions.

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY**
2 **OF SAN JUAN**

3 Phil Olbrechts, Hearing Examiner

4

RE: Suzanne Moe 5 Preliminary Plat 6 (PLP000-13-002)	FINDINGS OF FACT, CONCLUSIONS 7 OF LAW AND FINAL DECISION.
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7 **INTRODUCTION**

8 The applicant requests approval of an eight lot subdivision composed of seven
9 residential lots and one open space lot¹. The preliminary plat is approved subject to
10 conditions.

S.J.C. COMMUNITY

10 **TESTIMONY**

DEC 02 2013

11 Staff Testimony

DEVELOPMENT & PLANNING

12 Lee McEnery stated that the application is for a seven-lot division of a 7.01 acre
13 parcel inside the East Sound District. The only outstanding issue is naming the road;
14 otherwise, the proposal is consistent with regulations. She is unaware if the
15 subdivision will be in walking distance of a school. No off-site traffic mitigation was
16 addressed by Public Works. The subdivision will be at the end of what is currently a
17 dead-end road, Koko Road. Koko Road is off of Lover's Lane County Road. Public
18 Works did concurrency for the project. Parcel A is an irregular lot, and all seven
19 residential lots are in the northeast corner of the entire property. There are seven
20 acres, with a density of one lot per acre; however, the lots are clustered in one area,
21 and, individually, each lot is smaller than one acre. The 2-acre open area is part of
22 parcel A.

19 Applicant Testimony

20 Curt Johnson, Island Surveying, testified that he is the surveyor for the project. He
21 noted that Parcel A is the original parcel and is 7.01 acres. Parcel A is eligible for
22 seven lots. In this case, there is a pond on the west-side of the property, thus the open
23 space is on the west part of the parcel. 2.01-acres is the required amount of open
24 space for 7 acres (thirty percent). There will be 3-4 acres that is not developed or
25 open space. These acres may be developed in the future if the zoning for the parcel
changes. The solid lines on the plat depict the original parcel. The closest school is

¹ The applicant also proposes a residual lot reserved for future development. The conditions of approval require that this residual lot be merged into the open space tract with a proviso authorizing the conversion of open space area to developable land as authorized by current or future County regulations.

1 approximately .75 miles away. There are trails school children could use to reach the
2 school for most of the distance, but a path would be needed to connect Koko Road
3 and Enchanted Forest Road. Water will be provided by East Sound District. Mr.
4 Johnson will provide an updated plat with clearer details in future stages of the
5 project.

6 EXHIBITS

- 7 Ex. 1: 10/23/13 staff report
8 Ex. 2: Preliminary Plat Map
9 Ex. 3: Application materials
10 Ex. 4: Comment letters from Mark Wagner (10/16/13); Brian Carlstrom
11 (9/25/13); Gregory Ayers (10/4/13); Kurt Baumgarten (9/26/13); Curt Johnson
12 (9/30/13); Dave Osterbrink (9/13/13).

13 FINDINGS OF FACT

14 Procedural:

- 15 1. Applicant. The applicant is Suzanne Moe.
16 2. Hearing. A hearing was held in the San Juan County Council meeting
17 chambers on November 13, 2013 at approximately 10:00 am.

18 Substantive:

19 3. Site and Proposal Description. The applicants' propose to divide a 7 acre
20 parcel into 7 residential lots. A large residual parcel, not further divisible under the
21 current regulations, will contain a common area surrounding a pond located on
22 Parcel A. The proposed lots are all small and located in the northeast corner of the
23 property. All seven lots will be accessed from the west end of Koko Road, off Lovers
24 Lane.

25 4. Characteristics of the Area. Surrounding development is residential.

5. Adverse Impacts of Proposed Use. No adverse impacts are associated
with the proposal. The only critical area infringed upon by the residential lots is an
aquifer recharge area, which contains the entire county. The county's critical area
ordinance adequately protects the aquifer recharge area. The subdivision will be at a
modest density, which is compatible with surrounding residential use. As determined
in FOF No. 6 below, the subdivision will also be served by adequate public
infrastructure and services.

6. Adequacy of public infrastructure and services. The proposed subdivision
will be served by adequate public infrastructure and services. As noted by the
applicant's surveyor, Ex. 4, there is ample room in the residual/open space portion of
the proposed preliminary plat to accommodate any stormwater improvements
required by County stormwater regulations. A preliminary drainage plan has also

1 been submitted by the applicant and found to be sufficient by County staff.
2 According to staff at the hearing, the County public works department has done a
3 concurrency analysis and has determined that no road improvements are necessary to
4 meet County level of service standards. The EPRC (acronym undefined in the
5 correspondence) commented that it had concerns over the 16% grade proposed for the
6 project, See. Ex. 4 letter from Grey Ayers. As correctly noted by staff, 16% grade is
7 authorized by County regulations and there is no reason evident from the record that
8 suggests this standard is inadequate for this proposal. The Eastsound Sewer and
9 Water District has issued a certificate of sewer availability for the project. *See Ex. 3.*
10 The Eastsound Water Users Association has issued a letter stating it has adequate
11 capacity to provide water to the proposal. *Id.* The vast majority of the preliminary
12 plat area will be dedicated to open space, clearly exceeding the 30% open space
13 requirement of SJCC 16.55.240(E)(7) and hence meeting the open space and
14 recreational needs of the proposal. There is no information provided on the adequacy
15 of schools, but the small scale of the development presumably will not create any
16 excess demand on school facilities that cannot be accommodated. From the
17 testimony of the applicant's surveyor, it appears that there may be a school within
18 walking distance of the subdivision and that there may be a gap in pedestrian facilities
19 to provide safe walking conditions to and from school. The conditions of approval
20 will require staff and the applicant to investigate the reasonableness of providing for
21 pedestrian improvements for safe walking conditions to and from school. The
22 conditions of approval also ensure that there will be adequate infrastructure for fire
23 protection.

14 CONCLUSIONS OF LAW

15 Procedural:

16
17 1. Authority of Hearing Examiner. SJCC 18.70.050(E)(1) provides that the hearing
18 examiner shall hear and issue final decisions on preliminary plat applications.

19 Substantive:

20 2. Zoning Designations. The subject property is designated Eastsound Residential 1
21 unit/acre.

22 4. Permit Review Criteria. SJCC 18.70.050(F) establishes the criteria for approval
23 of preliminary plat applications. Applicable criteria are quoted in italics below and
24 applied through corresponding conclusions of law.

25 **SJCC 18.70.050(F):** *The preliminary subdivision shall be approved only if:*

1. The application meets the requirements in SJCC 18.70.020 and this section, the standards in SJCC 18.70.060 and the applicable standards in Chapters 18.40, 18.50 and 18.60 SJCC; and complies to the policies and requirements of Chapter 58.17 RCW, the Shoreline Management Act (Chapter 90.58 RCW) and the policies in Element 3 of the Comprehensive Plan and the applicable regulations in Chapter

1 18.50 SJCC (the Shoreline Master Program), the State Environmental Policy Act, and
2 the Comprehensive Plan.

3 **RCW 58.17.110(2):** *A proposed subdivision and dedication shall not be approved*
4 *unless the city, town, or county legislative body makes written findings that: (a)*
5 *Appropriate provisions are made for the public health, safety, and general welfare*
6 *and for such open spaces, drainage ways, streets or roads, alleys, other public ways,*
7 *transit stops, potable water supplies, sanitary wastes, parks and recreation,*
8 *playgrounds, schools and schoolgrounds and all other relevant facts, including*
9 *sidewalks and other planning features that assure safe walking conditions for students*
10 *who only walk to and from school; and (b) the public use and interest will be served*
11 *by the platting of such subdivision and dedication. If it finds that the proposed*
12 *subdivision and dedication make such appropriate provisions and that the public use*
13 *and interest will be served, then the legislative body shall approve the proposed*
14 *subdivision and dedication. Dedication of land to any public body, provision of public*
15 *improvements to serve the subdivision, and/or impact fees imposed under RCW*
16 *82.02.050 through 82.02.090 may be required as a condition of subdivision approval.*
17 *Dedications shall be clearly shown on the final plat. No dedication, provision of*
18 *public improvements, or impact fees imposed under RCW 82.02.050 through*
19 *82.02.090 shall be allowed that constitutes an unconstitutional taking of private*
20 *property. The legislative body shall not as a condition to the approval of any*
21 *subdivision require a release from damages to be procured from other property*
22 *owners.*

23 5. The staff report contains a fairly thorough review of all applicable
24 development standards as identified in the criterion above and the findings and
25 conclusions thereof are adopted and incorporated by this reference as if set forth in
full. The staff report does not directly apply RCW 58.17.110(2), quoted above, which
is perhaps the most important criterion in subdivision review. As determined in FOF
No. 6 of this decision, the proposal provides for adequate infrastructure and public
services as required by RC 58.17.110(2). Further, it is determined that the proposed
preliminary plat is in the public use and interest and provides appropriate provisions
for the public health, safety and general welfare because it allows for reasonable use of
land while not creating any unmet demand upon public services and infrastructure and
also while not creating and adverse impacts upon adjoining uses.

21 *2. The application satisfactorily addresses the comments of the reviewing*
22 *authorities and is in the public interest (RCW 58.17.100 and 58.17.110).*

23 6. The Washington Department of Ecology has commented that a National Pollution
24 Discharge Eliminate System (NPDES) permit may be required for the proposal. The
25 applicant contends no such permit is necessary. The staff report notes that the
applicant can pursue this topic with DOE. The proposal is conditioned on acquisition
of any required NPDES permits prior to final plat approval. A comment was also
received from the EPRC expressing concern over the 16% road grade for the
proposal. As noted in FOF No. 6, the 16% grade is consistent with County road
standards and there is nothing to support a more strict standard.

1 Community Development and Planning Department, then recorded with the final
2 subdivision approval. All subdivision property owners shall participate in the
3 agreement.

4 10. All roads serving three or more lots shall comply with the road design and
5 construction standards specified in SJCC 18.60.100 of this Code.

6 11. Grass or other appropriate vegetation shall be established in the roadside ditches
7 prior to application for final subdivision approval, to provide bio-filtration of
8 stormwater runoff.

9 12. Drainage from roads shall be controlled using best management practices
10 provided in SJCC 18.60.080 and 100 and in the Western Washington Stormwater
11 Management Manual. Compliance with the requirements of the drainage plan is
12 required.

13 13. All lots shall be served by the Eastsound water system. Written guarantee of
14 connection shall be provided prior to final subdivision approval. An easement for
15 utilities shall be drawn on the final plat.

16 14. The proposal must meet the fire protection improvement standards contained in
17 SJCC 13.08. Fire hydrants shall be installed so that the distance between them
18 shall not exceed 800 road feet. The hydrant shall provide 500 gallons per minute
19 for 20 minutes. Prior to final subdivision approval, the required hydrants shall be
20 installed, inspected and approved by the Fire Marshal, or a variance shall be
21 obtained.

22 15. All survey standards and requirements shall be complied with pursuant to SJCC
23 18.70.070F2.

24 16. Prior to final approval, evidence should be submitted showing compliance with
25 SJCC 16.55.300G.1.a-c.

**The following conditions shall be shown as restrictions on the face of the plat, in
addition to those restrictions and dedications required by SJCC 18.70.100:**

17 17. The approved water source for the lots within this subdivision shall be the
18 Eastsound water system. If in the future another source of water is desired for any or
19 all of the lots within the subdivision, the source shall be approved by Health and
20 Community Services for quality and quantity.

21 18. Best management practices for controlling erosion and sedimentation shall
22 be used during construction of all roads and structures.

23 19. All utilities shall be placed underground.

24 20. All disturbed areas shall be restored to pre-project configurations,
25 replanted with local vegetation, and the vegetation maintained until it is firmly
established.

21. This subdivision has been approved by the responsible county officials on
the premise that each lot will be occupied by no more than one single family dwelling
and lawfully related outbuildings. No lot shall be otherwise occupied unless the
owner can first demonstrate to the county's satisfaction that the provisions for water

1 supply, sewage disposal, circulation, lot size and related planning considerations are
2 adequate to serve the proposed use. Compliance with this provision shall be effected
3 by written application to the Subdivision Administrator who shall be responsible for
4 coordinating the review of such requests and for making the required determination.

5 22. Maintenance of the road and the common area serving the lots in this
6 subdivision is shared equally by the lot owners.

7 23. There may be additional private conditions, covenants or restrictions in
8 addition to those shown on the face of this plat. Such private conditions may not be
9 shown on plats. Any private deed restrictions are supplemental to the requirements of
10 this Code. The County shall not be party to any private restrictions.

11 24. If during excavation or development of the site an area of potential
12 archaeological significance is uncovered, all activity in the immediate vicinity of the
13 find must be halted immediately, and the Administrator must be notified at once.

14 Dated this 27th day of November, 2013.

15 
16 Phil A. Olbrechts

17 County of San Juan Hearing Examiner

18 **Effective Date, Appeal Right, and Valuation Notices**

19 Hearing examiner decisions become effective when mailed or such later date in
20 accordance with the laws and ordinance requirements governing the matter under
21 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be
22 subject to review and approval by the Washington Department of Ecology pursuant to
23 RCW 90.58.140, WAC 173-27-130, and SJCC 18.80.110.

24 This land use decision is final and in accordance with Section 3.70 of the San Juan
25 County Charter. Such decisions are not subject to administrative appeal to the San
26 Juan County Council. See also, SJCC 2.22.100.

27 Depending on the subject matter, this decision may be appealable to the San Juan
28 County Superior Court or to the Washington State Shorelines Hearings Board. State
29 law provides short deadlines and strict procedures for appeals, and failure to timely
30 comply with filing and service requirement may result in dismissal of the appeal. See
31 RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to
32 promptly review appeal deadlines and procedural requirements and consult with a
33 private attorney.

34 Affected property owners may request a change in valuation for property tax purposes
35 notwithstanding any program of revaluation.

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RIGHT OF RECONSIDERATION

Parties to this hearing have a right to request reconsideration as outlined in SJCC 2.22.210(O).